V. STATEMENT

1. MATERIAL FACTS:

Petitioner, Jim Simmons, an employee of Union Terminal Company was injured while at work in the terminal yards of his employer when a loaded express wagon owned and operated by Railway Express Agency, Inc., which was parked on a narrow sloping ramp, rolled into him and knocked him off of the ramp and fell on top of him (R. 26-32).

Petitioner instituted this suit against his employer in the United States District Court for the Northern District of Texas, Dallas Division, under the Federal Employer's Liability Act, 45 U. S. C., Sec. 51, et seq. He alleged, among other things, that his employer was negligent in failing to furnish him a reasonably safe-place-in-which-to-work (R. 4-6). The jury found in answer to the only issues submitted on unsafe-place-to-work that, either the employer was not negligent in permitting others to use its premises, or, employer negligence, in that respect, did not contribute to the accident (R. 243-244). Trial Court Judgment against Petitioner (R. 247-248; printed in Appendix E hereto, infra., page 23), on this verdict, was affirmed by Court of Appeals for the Fifth Circuit (R. 266-270; printed in Appendix A and B hereto, infra., page 13), which held that the issues were fair but that Petitioner failed to object to the charge given or except to the court's refusal to give Petitioner's requested charge, as required by Rules 49-51.

2. HOW QUESTIONS WERE PRESENTED IN COURTS BELOW:

A. TRIAL COURT

Petitioner alleged in his Complaint (R. 1-10) that many grounds of employer negligence contributed to his injuries, some pertinent allegations being (R. 4-6):

> "A. In failing to furnish the Plaintiff a reasonably safe place in which to work."
>
> "N. In furnishing a ramp too narrow for the use of its employees, its own trucks, and Railway Express Agency, Inc. truck."
>
> "P. By reason of defect and insufficiency in its equipment and works in that it used a sloping ramp which caused the unattended truck to strike Plaintiff."

Petitioner's Requested Charge (R. 16-17; and printed in Appendix F hereto, infra., Page 25), covering employer negligence in failing to furnish safe-place-to-work was refused (R. 147). The trial judge submitted special issues (R. 242-245) which limited the jury's consideration of employer negligence to the one element of permissive use of its premises by others:

> "Special Issue No. 3: Do you find from a perponderance of the evidence that the Defendant Union Terminal Company was guilty of negligence which in whole or in part was a proximate cause of the accident in question in any one or more of the following respects:
>
> "(a) In failing to furnish the plaintiff a reasonably safe place to work by permitting an Express wagon to be parked on the sloping ramp of its premises in a position to roll?
>
> "Answer: 'Yes' or 'No'.
>
> "Answer: 'No'.

"(b) In failing to furnish the plaintiff a reasonably safe place to work by permitting the Railway Express Agency, Inc. employees to use the ramp on the premises where the plaintiff Jim Simmons was required to work, for operating and parking Express trucks?

"Answer: 'Yes' or 'No'.

"Answer: 'No'."

Petitioner excepted to the court's refusal to give his requested charge (R. 147) and objected to the special issue submission by specifically pointing out that it did not cover every element that the jury might consider (R. 146, 147, 150, 151, and 153; printed in Appendix G hereto. infra., page 27). Objections were recognized and ruled on by the trial Judge (R. 150-155, 239).

After trial court judgment was rendered against him (R. 247-248; printed in Appendix E hereto, infra., page 23), Petitioner timely filed Motion for New Trial (R. 249-251) assigning errors, material to this Petition: Admitting for impeachment purposes evidence of payment of retirement benefits; special issues unduly restricted Petitioner's right of recovery. This Motion was overruled (R. 251; printed in Appendix H hereto, infra., page 30).

B. COURT OF APPEALS

On appeal to the United States Court of Appeals for the Fifth Circuit two pertinent points presented were:

Point One—that evidence of payment of railroad retirement benefits and court's instructions thereon were improper;

Point Two—Special Issue charge unduly restricted Petitioner's right of recovery;

Court of Appeals affirmed (R. 266-270; printed in Appendix A hereto, infra., page 13), and Petition for Rehearing (R. 271; printed in Appendix C hereto, infra., page 18), which was denied July 19, 1961, (R. 281; printed in Appendix C hereto, infra., page 21), assigned as error the holding that; no error was committed in the charge, that no point was preserved by Petitioner, and that admission in evidence of collateral benefits was discretionary.

VI. REASONS FOR GRANTING THE WRIT

1. The Federal District Court trial and decision of the Court of Appeals were not in accord with the applicable decisions of this Court.

The limited jury submission which did not encompass all the possible grounds and relevant facts creating the unsafe-place to work was an erosion which nullified, or at least narrowed the effectiveness of, the liberal provisions of the Federal Employer's Liability Act, and constituted an invasion of the province of the jury contrary to the Seventh Amendment of the United States Constitution and was in direct conflict with the holdings of this court, such as *Arnold v. Panhandle and Santa Fe Ry. Co., 353 U. S. 360, 77 S. Ct. 840.*

This Honorable Court has held it to be a question for the jury to determine whether an employer under the Act is liable for injuries to an employee by virtue of failing to furnish a reasonably safe-place-to-work. The limited jury consideration of employer negligence in the issues submitted

calls for exercise of power of supervision. This Court has many times made the denial of trial by jury the basis of granting Writs of Certiorari:

Bailey v. Central Vermont Ry., Inc., 319 U. S. 350, 63 S. Ct. 1062;

Ellis v. Union Pacific R. Co., 329 U. S. 649, 67 S. Ct. 598;

Jesionowski v. Boston & Maine R. Co., 329 U. S. 452, 67 S. Ct. 401;

Lavender v. Kurn, 327 U. S. 645, 66 S. Ct. 740;

Schulz v. Pennsylvania R. Co., 350 U. S. 523, 76 S. Ct. 608;

Smalls v. Atlantic Coast Line R. Co., 348 U. S. 946, 75 S. Ct. 439;

Wilkerson v. McCarthy, 336 U. S. 53, 69 S. Ct. 413;

Writs of Certiorari have also been granted to determine propriety of submitted instructions and issues for jury determination:

O'Donnell v. Elgin Joliet & Eastern Ry. Co., 338 U. S. 384, 70 S. Ct. 200;

Baker v. Texas and Pacific Ry. Co., 359 U. S. 227, 79 S. Ct. 654;

Ward v. Atlantic Coast Line R. Co., 362 U. S. 396, 80 S. Ct. 789.

2. The lower court judgments raise important questions of law in regard to the fair and uniform administration of the Federal Employer's Liability Act which should be clarified by this Honorable Court.

The trial court ruled that the Petitioner was only entitled to a limited jury consideration of employer negligence in failing to furnish a reasonably safe-place-to-work and the Court of Appeals determined this to be a fair submission.

This Honorable Court in *Rogers v. Missouri Pacific R. Co., 352 U. S. 500, 77 S. Ct. 443*, laid down the rule that:

> "Judicial appraisal of the proofs to determine whether a jury question is presented is narrowly limited to the single inquiry whether, with reason, the conclusion may be drawn that negligence of the employer played any part at all in the injury or death."

The limited jury trial was plain error fundamentally unfair and resulted in gross miscarriage of justice. The record discloses that this error was clearly called to the attention of the trial Judge (R. 16, 146-153) in compliance with Rules 46 and 51. Such narrow administration of the Act and construction of Rules is a matter of importance which this Court is urged to scrutinize in the interest of justice, as it has in the past. The strict construction of Rule 51 in this case is not in accord with *Montgomery v. Virginia State Lines (D. C.), 191 F. 2d 770*, which held that rules 46 and 51 should be considered together.

3. Whether it was error, over Petitioner's objections, to admit for impeachment purposes evidence that Petitioner

had received benefits under the Railroad Sickness and Disability Act?

The holdings of the Courts of Appeal are not in accord on this point and have ordinarily held the admission of such evidence to be improper.

Sinovich v. Erie R. Co., (3d Cir.), 230 F. 2d 658;

Altenbaumer v. Lion Oil Co., (5th Cir.), 186 F. 2d 35;

Chicago Great Western Ry. Co. v. Peeler (8th Cir.), 140 F. 2d 865;

Flener v. L. & N. R. Co. (7th Cir.), 198 F. 2d 77;

Reiner v. Northern Pacific Terminal Co. of Oregon (9th Cir.), 259 F. 2d 438.

There was no predicate for impeachment and nothing to impeach. The admission in evidence of payments of such unexplained benefits, (R. 15, 236) for any purpose, as the last bit of testimony, after first being ruled out, was so prejudicial that it thereafter permeated the entire proceedings and obviously resulted in an injust verdict.

The rulings below reflect a philosophy hostile to application of the liberal provisions of the Act. A trial Judge should not be allowed to whittle away and nullify the effectiveness of those provisions by limiting the jury's consideration of an ultimate issue and permit it, in passing on a very narrow issue of negligence, to hear evidence of payments of collateral benefits which evidence gave the impression that Petitioner was then being paid for his loss. Affirmance on appeal, by

strict construction of rules, should not be allowed to stand. Claims of thousands of employees will be affected by the decision.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

J. O. BEAN,
710 Gulf States Bldg.,
Dallas 1, Texas,
Counsel of Record for Petitioner.

CERTIFICATE OF SERVICE

Petitioner, Jim Simmons, served Respondent, Union Terminal Company, with a copy of the Petitioner's Petition for Certiorari in accordance with Rule 33 sub-sections 1 and 3 (b) by personally delivering the same to Counsel of Record for Respondent, Honorable Don L. Case, Republic National Bank Building, Dallas, Texas, on the 6th day of September 1961.

J. O. BEAN,
710 Gulf States Bldg.,
Dallas 1, Texas,
Counsel of Record for Petitioner.

APPENDIX A

Opinion of the Court of Appeals

OPINION OF THE COURT—FILED MAY 9, 1961

In the

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 18320

JIM SIMMONS,

Appellant,

versus

UNION TERMINAL COMPANY,

Appellee.

Appeal From the United States District Court for the Northern District of Texas.

(May 9, 1961)

Before CAMERON and BROWN, Circuit Judges, and HANNAY, District Judge.

PER CURIAM: In this personal injury action under the Federal Employers' Liability Act the appellant, against whom a jury verdict was returned, assigns three errors as requiring reversal; that the employer failed as a matter of law to furnish a reasonably safe place for appellant to work; that the court erred in submitting the case to the jury under a "special issue charge," and that the court erred in

admitting, for impeachment purposes, evidence that appellant was receiving Railroad Retirement Benefits. We do not think that the appellant has shown that the court committed reversible error in any of the particulars argued.

Aside from the fact that appellant made no motion or request for a directed verdict in his favor, see *Seaboard Air Line Railroad Company v. Horowitz*, 5 Cir., 1960, 277 F. 2d 738, there was a clear conflict in the evidence between appellant's version and that of an eye witness to the occurrence. Appellant's version was that the express truck causing his injury was permitted by the appellee to be placed by the express company upon a sloping ramp, unattended and without brakes; and that the appellee breached several duties owed to him such as failing to furnish a level ramp, to keep a proper lookout for the appellant, and failing to warn the appellant of the likelihood that the truck would move.

Appellee's evidence, however, disagreed directly with that of appellant. The express company's employee of fifteen years, one Coleman, testified that he had just parked the truck which injured appellant; that he had placed it so that it was headed into a post and could not move unless someone changed its position; that immediately before his injury, the appellant pulled the truck from behind the post and cut the wheels so that gravity would propel it toward the ramp edge; and that, seeing the truck rolling towards the edge of the ramp, appellant sized hold of it and was jerked by it over the edge of the ramp. It was undisputed that the ramp had a slope of two or three inches to each side of the center

so that water would drain from it and keep it from being slippery and dangerous; and that such a construction was necessary and proper.

The jury was called upon to decide which of the stories it would believe, and there was ample credible evidence to warrant its special finding that neither the express company nor appellee left the truck unbraked and in a position to move by its own weight; and that the appellee was guilty of no negligence which proximately caused appellant's injuries.

After giving a charge defining in general terms the duty owed appellant by the appellee, the trial court propounded seven special issues to the jury. This procedure conformed precisely to the provisions of Rule 49, F.R.C.P., and the questions asked were fairly put and the required answers covered the issues framed by the pleadings. The appellant did not object to the form or contents of the questions constituting the special issues, and did not object to the charge given by the court below or except to its failure to give the one charge requested by appellant, as required by Rules 49-51, F.R.C.P. And see generally *American Fidelity and Casualty Company et al v. Drexler*, 5 Cir. 1955, 220 F. 2d 930, and *Clegg v. Hardware Mutual Casualty Co.*, 5 Cir., 1959, 264 F. 2d 152.

The court permitted appellee, upon its recall of the appellant to the witness stand at the conclusion of his evidence, to ask appellant if it was not true that he had received eighty dollars every two weeks as benefits under the Railroad Sickness and Disability Act. The evidence was offered by the appellee only for purposes of impeachment, and the

court carefully explained to the jury that it was received solely for consideration by them on the question of whether it tended to impeach the testimony given by appellant as a witness for himself. The court had initially ruled that the question would not be permitted, and changed its ruling only after appellant had given testimony which the court thought was at variance with that so introduced in rebuttal concerning the payments under the Railroad Sickness and Disability Act. We think that, as handled and limited by the court below, the evidence was not prejudicial and that its admission was within the discretion of the trial court. *Reiner v. Northern Pacific Terminal Co. of Oregon*, 9 Cir., 1958, 259 F. 2d 438. And cf. *Dunham v. Pannell*, 5 Cir., 1959, 263 F. 2d 725 and *Schybinger v. Interlake Steamship Company*, 7 Cir., 1959, 273 F. 2d 307.

It appearing that no reversible error was committed by the court below, the judgment appealed from is AFFIRMED.

A true copy

Test: Edward W. Wadsworth

EDWARD W. WADSWORTH

Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

(Seal)

Aug. 11, 1961

APPENDIX B

Judgment of the Court of Appeals

JUDGMENT.

Extract from the Minutes of May 9, 1961

No. 18320

JIM SIMMONS

versus

UNION TERMINAL COMPANY

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Jim Simmons, and the surety on the appeal bond herein, United States Fidelity & Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

APPENDIX C

Appellant's Petition for Rehearing and Order Denying Rehearing

In the

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 18320

JIM SIMMONS,

Appellant,

v.

UNION TERMINAL COMPANY,

Appellee.

Appeal From the United States District Court for the Northern District of Texas, Dallas Division

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APPELLANT'S PETITION FOR REHEARING

To the Honorable United States Court of Appeals for the Fifth Circuit:

Now comes Appellant, Jim Simmons, and files this his Petition for Rehearing and respectfully moves this Honorable Court to set aside and vacate the decision heretofore made and judgment heretofore entered on May 9, 1961, and grant him a new hearing and as grounds therefor assigns error as follows:

1.

This Honorable Court erred in holding that the Trial Court charge conformed to Rule 49 F. R. C. P. and covered issues framed by the pleadings. The Trial Court wholly failed to submit an unconditional and unrestricted issue on unsafe place as raised by pleadings and evidence but limited this ultimate issue to only one element of "permissive use."

2.

This Honorable Court erred in holding that Appellant did not object to the charge given or except to failure to give Appellant's requested charge.

3.

This Honorable Court erred in holding that evidence of payment of collateral benefits was not prejudicial and that its admission was within Trial Court's discretion.

4.

This Honorable Court erred in failing to Reverse and Remand the Trial Court Judgment because of: evidence and instructions on collateral benefits, unduly restrictive special issue charge, and jury verdict contrary to great weight and preponderance of the evidence, on unsafe place as presented under Points One, Two and Three in Brief for Appellant.

WHEREFORE, Appellant prays that this Petition for Rehearing be granted and that the Judgment heretofore entered by this Honorable Court on May 9, 1961, affirming the Judgment of the Trial Court, be set aside and that the Trial Court Judgment be Reversed and this cause Remanded for a jury trial on all issues, otherwise, a gross miscarriage of justice will result.

Respectfully submitted,

GALLAGHER, FRANCIS, BEAN,
WILSON & BERRY,
710 Gulf States Building,
Dallas 1, Texas,

Of Counsel for Appellant.

J. O. Bean, Counsel of Record for Appellant, does hereby certify that the above and foregoing Petition of Appellant for Rehearing is filed in good faith and not for delay and is believed by him to be meritorious.

Served on Appellee, Union Terminal Company, by mailing a copy to Don L. Case, Counsel of Record for Appellee, Republic National Bank Building, Dallas, Texas.

In the

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 18320

JIM SIMMONS,

Appellant,

v.

UNION TERMINAL COMPANY,

Appellee.

Appeal From the United States District Court for the Northern District of Texas

---

(July 19, 1961)

ON PETITION FOR REHEARING

Before CAMERON and BROWN, Circuit Judges and HANNAY, District Judge.

PER CURIAM:

IT IS ORDERED that the appellant's petition for rehearing be, and it is hereby DENIED.

APPENDIX D

Federal Rules of Civil Procedure

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Rule 51. Instructions to Jury: Objection

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

APPENDIX E

Judgment of the United States District Court for the Northern District of Texas Dallas Division

JUDGMENT.

Filed Feb. 19, 1960.

In the United States District Court for the Northern District of Texas, Dallas Division.

JIM SIMMONS,

vs.

UNION TERMINAL COMPANY.

Civil Action No. 7825-A.

On the 15th day of February, 1960, at a regular term of Court came on to be heard the above entitled and numbered cause, and came the plaintiff in person and by and through his attorneys of record, and came the defendant, by and through its attorneys of record, and both parties announced ready, whereupon the cause proceeded with the impaneling of a jury composed of Andrew J. Osborne and eleven other lawful jurors, the reading of the pleadings and the introduction of the evidence until February 16th, on which date the evidence was concluded; whereupon the Court submitted the cause to the jury on special issues and the jury in answer to the special issues having found that the defendant was not

guilty of any negligence proximately causing the plaintiff's injuries, and the Court having accepted the verdict of the jury, and it appearing to the Court on the law of the case and on the jury's verdict that defendant is entitled to judgment that plaintiff take nothing, it is therefore,

Ordered, Adjudged and Decreed, that the plaintiff, Jim Simmons, take nothing by his suit against the Union Terminal Company.

It is Further Ordered Adjudged and Decreed, that the Union Terminal Company have and recover of and from the plaintiff, Jim Simmons, its costs in this behalf expended.

Signed and Entered this 19 day of February, 1960.

JOE E. ESTES,
United States District Judge.

APPENDIX F

Petitioner's Requested Charge

PLAINTIFF'S SPECIALLY REQUESTED CHARGE
No. ONE

Filed 10 day of Feb. 1960.
(Title Omitted.)

Ladies and Gentlemen of the Jury:

You are instructed that as a part of the law of this case the Union Terminal Company, Plaintiffs' common carrier employer, is liable in damages to Plaintiff, Jim Simmons, its employee for injuries resulting in whole or in part from the negligence of any of the officers, agents or employees of the Union Terminal Company, or by reason of any defect or insufficiency, due to its negligence, in connection with the operation of its premises such as the use of a sloping ramp, permitting express wagon to be parked on its sloping ramp unattended and without application of brakes, in the permissive use of its premises by Railway Express Agency where its employee, Jim Simmons, was required to work, or in any one of the respects alleged in the operation of its premises, ramp, appliances, machinery, track road bed, works or other equipment or use of its premises by Railway Express Agency, and in so operating its premises it failed to furnish a reasonable safe place for its employee, Jim Simmons to work or failed to furnish him reasonably safe equipment and appliances with which to work and you so find from a preponderance of the evidence, you will find for the Plaintiff and assess his dam-

ages against the Defendant, Union Terminal Company, in accordance with the charge on damages as given you elsewhere herein.

You are further instructed that as a part of the law of this case the fact that the employee, Jim Simmons, may have been guilty of contributory negligence shall not bar a recovery herein but his damages shall be diminished by you in proportion to the amount of negligence attributable to him as such employee, you will, therefore, further find and determine from a preponderance of the evidence whether or not the injuries suffered by the Plaintiff Jim Simmons, resulted in part from his own contributory negligence and if you so find, you will determine to what extent such contributory negligence, if any, contributed and in that event the damages found by you against the Union Terminal Company shall be diminished by you in proportion to the amount of contributory negligence, if any, attributable to the Plaintiff, Jim Simmons.

In summing it up, you will find and determine from a preponderance of the evidence whether or not employer's negligence in failing to furnish a safe place to work or in failing to furnish reasonable safe tools and equipment or in permitting the use of its premises of Railway Express Agency where its employee was required to work played a part in producing its employee's injuries and if you so find, you will find for the Plaintiff and assess his damages in accordance with the charge on damages as given you elsewhere herein.

United States District Judge.

APPENDIX G

Objections to Court's Charge

"At no place in the charge do I find where the Court has submitted the proposition to the jury as to whether or not the common carrier employer failed to exercise ordinary care in furnishing him a reasonably safe place to work. That is the ultimate issue in an FELA case held by the Supreme Court in many cases, and as requested in my special general charge." (R. 146) * * * "Specifically, I am objecting because there is no submission of an issue on unsafe place." (R. 147) * * * "It doesn't include every element that the jury might consider down here as to space, as to height, as to elevation. Now, it does include permissive use of the Railway Express Agency truck, things like that. That is why I seek to object to it, Your Honor." (R. 150) * * * "I am objecting to Special Issue No. 3, * * *." (R. 151) "* * * I just feel that the plaintiff in one of these cases is entitled to go to the jury on any conduct of its (his) employer controlling the premises, whether some third party comes in there or not, and I base that on the Arnold case * * *." (R. 153).

APPENDIX H

Motion for New Trial and Order Overruling Motion for New Trial in the United States District Court for the Dallas Division

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MOTION FOR NEW TRIAL.

Filed Feb. 26, 1960.

(Title Omitted.)

To the Honorable United States District Judge:

Plaintiff respectfully moves this Honorable Court to set aside the judgment entered herein February 19, 1960, and grant a new trial because of errors which substantially affected Plaintiff's rights:

I.

The Honorable Trial Court erred in permitting defense counsel, over Plaintiff's objections, to recall Plaintiff to the witness stand and interrogate him about payments to him of railroad retirement benefits.

II.

The Honorable Trial Court erred in instructing the jury that the evidence of payments of railroad retirement benefits to the Plaintiff was admitted for the purpose of impeachment. The Court's instructions, relative thereto, together with evidence thereon, resulted in substantial harm and prejudice to

Plaintiff and gravely and unwarrantably impaired the worth of Plaintiff's claim to the jury. Such evidence and instructions not only affected the jury's consideration of the extent and duration of his injury and damage but also affected the jury's proper consideration of the evidence and issues on liability and primary negligence. The Court's instruction was to the effect that the receipt of benefits impeached Plaintiff's credibility. Such instruction prevented a fair and unbiased consideration by the jury of Plaintiff's case.

III.

The Honorable Trial Court erred in refusing to submit the case to the jury in a general charge as covered in Plaintiff's Requested Charge No. 1. The submission of the case on specific special issues, in accordance with state Court rules and practice, unduly restricted Plaintiff's right of recovery on the general theory of unsafe place and working conditions furnished by his employer and thereby deprived Plaintiff of a clear unrestricted and unabridged submission of the liberal provisions of the Federal Employer's Liability Act.

IV.

The verdict of the jury was against the weight of the evidence in that the facts established as a matter of law that Defendant failed to furnish the Plaintiff a reasonably safe place in which to work; that employer negligence played a part in the creation of the unsafe place and working conditions which existed on Defendant's premises.

Wherefore that justice may be done Plaintiff prays that judgment entered in favor of Defendant February 19, 1960 be set aside and that a new trial be granted.

J. O. BEAN,
Attorney for Plaintiff.

ORDER.

Filed Mar. 25, 1960.

(Title Omitted.)

Came on to be heard plaintiff's motion for new trial which was seasonably filed and presented and the Court being of the opinion that same should be in all things overruled it is

Ordered, Adjudged and Decreed that plaintiff's motion for New trial be and same is hereby in all things overruled.

Signed and Entered this the 25 day of March 1960.

JOE E. ESTES,
United States District Judge.

Approved as to form:

J. O. BEAN,
Attorney for Plaintiff.